

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO 5429 OF 1995

AND

SPECIAL CIVIL APPLICATION NO 6592 OF 1995

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

HARISHCHANDER N BHADAURIYA & ORS.

VERSUS

U.P. STATE BRIDGE CORPN LTD. & ORS.

Appearance:

MR PR THAKKAR for the Petitioners

MR YH VYAS for the Respondents

CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : 22/07/99

#. Heard learned counsel for the parties.

#. It is not in dispute that the petitioners are working as daily wagers. The petitioners, in these special civil applications prayed for direction to the respondents to treat them as regular and confirmed employees and to give them all the benefits as are given to confirmed employees of the corporation. It is next prayed to direct the respondents not to terminate the services of the petitioners and to provide job security. Lastly, it is prayed that the action of the respondent to attempt to terminate their services be declared to be illegal, null and void. As usual the prayer has also been made for the interim relief.

#. It is the case of the respondents that the petitioners were given employment on daily wages on a project and on completion of project they have all the right to terminate their services. However, it is stated that while terminating their services they will follow procedure laid down for retrenchment of the employees in Industrial Disputes Act, 1947.

#. The learned counsel for the respondent made a reference to certain decisions of the apex court to show and establish that the daily wagers, who were appointed for a project and on completion of the same, they have no right whatsoever of continuation in the employment or of regularization and/or confirmation etc.

#. The learned counsel for the petitioner on the other hand raised manifold contention that it is not the engagement of the petitioners on a project, the respondents are having different projects in existence and it is also taking further projects that there was an understanding that after completion of one project they will be taken in the running project. It is further contended that for all the time to come the petitioners cannot be continued as daily wagers otherwise it will amount to exploitation of the poor persons.

#. The special civil application No.5429/95 has come up before this court for preliminary hearing on 6/7/1995. The court passed the following order :

"Rule. Issue notice as to interim relief returnable by 27/7/95. In the meanwhile the services of the petitioners shall not be

terminated. Direct service is permitted."

#. The second special civil application No.6592/95 has come up before this court for preliminary hearing on 2/8/95 and in this matter also rule has been issued and identical interim relief as what has been granted by this court in special civil application No. 5429./95 has been granted. On 17/4/96 in the first petition and in the second petition on 19/3/96 identical orders have been passed by this court and which reads as under :

"Heard the learned counsel for both the sides on the question of interim relief. The petitioners have been working as daily wagers. The respondents have stated in their affidavit that if any action is taken by the Corporation upon the conclusion or completion of the project, it would be taken in accordance with law and the Corporation would follow the principles of "last come first go". The petitioners being daily wagers would be entitled to protection during the pendency of the petition only in that capacity and on the same conditions on which they have been working. It is accordingly directed, in modification of the earlier interim order, that during the pendency of this petition the petitioners will be allowed to work as daily wagers in accordance with the policy of the respondent Corporation and their services will not be terminated except in accordance with law."

#. In the reply to the special civil application, as stated earlier, the respondents have made it specific and clear that as and when occasion arises for the termination of the services of the petitioners, the corporation will follow procedure of retrenchment as per law. The principle of "last come first go" is also a part of the procedure of the retrenchment of the employees. I find from one of the special civil application that the Akhil Gujarat Mazdoor Sabha is taking care against any possible unfair labour practice and exploiting tendency adopted by the respondent-Corporation against the petitioners. The union has already once approached to the Assistant Commissioner of Labour, Vadodara and some settlement has already been arrived at between the Union and Management. The petitioners are continuing in their services and in the eventuality of termination of their services, it has also been undertaken by the respondents before this court that before doing the same the respondent-Corporation

should follow the principle of "last come first go" as well as the provisions of retrenchment as per the law.

#. I do not find any ground to keep these writ petitions pending in this court and to adjudicate upon the question of the entitlement of the petitioner and grant of relief as prayed by them therein at this stage in these proceedings. Yet another reason not to entertain these petitions is that there are disputed questions of facts involved therein which are necessary to be adjudicated. In case this petition is to be decided on merits under Article 226 of the Constitution, these disputed questions of facts cannot be gone into by this court as it cannot record statements of the parties in these proceedings. It is not out of context to state that an efficacious alternative statutory remedy is available to the petitioner, in case their services are terminated by the respondents that is of raising the industrial dispute under the provisions of Industrial Disputes Act, 1947 in these matters. Whether the petitioners were appointed permanently or whether the project is permanent or temporary whether employees of the project have any right to continue in their service or any corresponding obligation on the respondents etc. are the serious disputed questions of facts, which are to be gone into and decided but for decision where of this writ petition under Article 226 of the Constitution is not the proper remedy, more so, when the petitioners have efficacious alternative statutory remedy available. Yet another reason which justifies of non-interference of this court in this petition is that the petitioners are seeking the benefits of regularization on the basis of some settlement arrived at between the management and the workers union and that settlement obviously would have been entered into under the provisions of Industrial Disputes Act, 1947. The remedy for the enforcement of the same has to be taken under the provisions of the very act. In substance, where the petitioners want to take benefits of some settlement, which has arrived at under a special statute the remedy provided thereunder is only the appropriate efficacious remedy to be availed of for enforcement thereof. The union is also there and it has all the right to raise the dispute. So far as the termination of the services of the petitioners is concerned though it is not so far done but, if it is so done then also the remedy is available to the petitioners to raise industrial dispute and the reason is very obvious that for adjudication of this dispute also the disputed questions of facts are to be determined. The reference may have to the latest pronouncement of the apex court in the case of Scooters India and Others V.

Vijai E.V. Eldred (1998) 6 SCC 549. In this decision the apex court held,

"The above facts alone are sufficient to indicate that there was no occasion for the High Court to entertain the writ petition directly for adjudication of an industrial dispute involving the termination of disputed questions of fact for which remedy under the industrial laws was available to the workman. That apart, the writ petition was filed more than 6 years after the date on which the cause of action is said to have arisen and there being no cogent explanation for the delay, the writ petition should have been dismissed on the ground of laches alone. It is also extraordinary for the High Court to have held clause 9.3.12 of the standing orders as invalid. Learned counsel for the respondent rightly made no attempt to support this part of the High Court's order. In view of the fact that we are setting aside the High Court's judgment, we need not deal with this aspect in detail."

##. Last but not least, in view of the order of this court dated 17/3/1996 otherwise also nothing now substantially survives in these special civil applications. No writ of mandamus or direction restraining the respondent-Corporation from terminating services of the petitioner can be issued. The respondent-Corporation has all the right to terminate their service in accordance with law. Whether the services of the petitioners are terminated in accordance with law cannot be gone into and decided at this stage where admittedly their services have not been terminated. At this stage it is very very difficult for this court to determine these issues. This court has protected the petitioners more than necessary and in case, their services are terminated they are free to raise industrial dispute.

In the result, both the special civil applications fail and the same are dismissed. Rule in both the special civil applications discharged. Parties are directed to bear their own cost of litigations.

(S.K.Keshote, J.)

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